It follows, from the views expressed, that the judgment of the Supreme Court of Iowa must be reversed, and that court directed to remand the cause to the proper inferior court of the state for further proceedings in conformity witth this opinion; and it is so ordered.

BRADLEY, J.—I dissent from the opinion of the court in this case for reasons stated in my opinion delivered in the cases of *Knox* v. *Lee* and *Parker* v. *Davis*. In all cases where the contract is to pay a certain sum of money of the United States, in whatever phraseology that money may be described (except cases specially exempted by law), I hold that the legal-tender acts make the treasury notes a legal tender. Only in those cases in which gold and silver are stipulated for as bullion can they be demanded in specie, like any other chattel. Contracts for specie made since the legal tender acts went into operation, when gold became a commodity subject to market prices, may be regarded as contracts for bullion. But all contracts for money made before the acts were passed must, in my judgment, be regarded as on the same platform. No difficulty can arise in this view of the case in sustaining all proper transactions for the purchase and sale of gold coin.

MILLER, J.—In the case of *Bronson* v. *Rhodes* I expressed my dissent on the ground that a contract for gold dollars, in terms, was in no respect different, in legal effect, from a contract for dollars without the qualifying words, specie or gold, and that the legal-tender statutes had, therefore, the same effect in both cases.

I adhere to that opinion, and dissent from the one just delivered by the court.

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*Supreme Court of Pennsylvania.*

## JOHNSON *v.* THE PHILADELPHIA AND WEST CHESTER RAILROAD COMPANY.

A passenger from Baltimore to West Chester, possessing a through ticket, good over both roads, attempted at the junction to pass from the Baltimore car and enter the West Chester car, but being encumbered with bundles, and the West Chester train moving on without stopping a reasonable time to make a transfer of the passengers, he missed his footing, fell to the track, and had his right arm crushed by the wheels of the car. *Held:* 1. Under the arrangement between the railroad companies for through tickets, it was their duty to give a reasonable time for the transfer of passengers and their baggage. 2. The wrong of the company in not

allowing a reasonable time for such transfer, together with its influence upon the mind and act of the passenger, should be considered in discussing the question of negligence. 3. The judge below should have left it to the jury to say, under all the circumstances in evidence, whether the danger of boarding the train when in motion was so apparent as to have made it the duty of the plaintiff to desist from the attempt. He should have left the question of negligence on the part of the plaintiff to be determined by the jury upon the circumstances.

ERROR to the Court of Common Pleas of *Chester county.*

The opinion of the court was delivered by

AGNEW, J.—This case appears to have been carefully tried by the learned and able judge in the court below. Yet, after an attentive examination, we are led to the conclusion, that the rule of concurrent negligence was held a little too closely against the plaintiff, and the province of the jury rather trenched upon. The judge himself states the well-known rule that, "generally what constitutes negligence in a particular case is a question for the jury:" *Kay* v. *Penna. Railroad Co.*, 15 P. F. Smith 273, 274; *Penna. Canal Co.* v. *Bently*, 16 Id. 30. But we think his error was in laying down, as a rule of *law*, a matter which was only an element in the evidence, to wit, that if the train was distinctly running on the track, so as to be perceptible to those alongside, the plaintiff was guilty of negligence in attempting to enter upon the train, and could not recover. The following passages in the charge perhaps most clearly denote the spirit and meaning of the instruction given to the jury:—

"Yet, if the train was entirely still when he stepped from the platform by its side, it is not suggested that there was any want of care in the attempt to enter. If, however, it was not entirely still—was in the act of starting—taking up the slack, as one of the witnesses has denominated it, but was not yet distinctly under way when he attempted to enter, then it is for you to determine whether he was or was not guilty of carelessness in making the attempt, encumbered as he was." "The defendant has asked us to instruct you, that if the train was in *motion* when the plaintiff attempted to get upon it, he was guilty of negligence, and cannot recover. If by the term 'motion' is meant running upon the track—distinctly running so as to be perceptible to those alongside—the point is affirmed, otherwise it is not. There may have been some motion incident to starting, and preceding it, yet of so slight a character that the law cannot pronounce an attempt to

enter at the time negligence; but must leave it to the jury to judge of it in the light of all the circumstances. But if the train was distinctly running upon the track when the plaintiff attempted to enter, then he was guilty of negligence, and cannot recover."

It is evident that the meaning which a jury would draw from the charge was, that if the preparation for starting was over, and the train was under way, that, no matter how slow the motion, yet if the running of the train on the track was distinctly visible to a bystander, the plaintiff's time to enter was past, and his attempt to get on the train would be such culpable negligence *in law* as would bar his recovery. That such a rule may be applicable to some cases may be true, though we do not now affirm it. But clearly we are not to leave out of view, in all cases, the conduct of the railroad company in producing the result, and the natural and probable effect that conduct has had upon the mind of the passenger in influencing his act. There cannot be an inexorable rule so unbending that no circumstances begotten by the railroad company itself shall not change it. Even when a train is distinctly under way, there are cases, and this was one, where it must be left to the jury to say whether the danger of going aboard was so apparent that it would be culpable negligence in the passenger to attempt it. Here the West Chester Railroad Company had a running arrangement with the Philadelphia and Baltimore Central Railroad Company, by which their trains met at the Baltimore Junction, and passengers were received from each on through tickets. The plaintiff's ticket is not questioned. Under such an arrangement, it is the duty of each company to give a reasonable time for the transfer of passengers and their baggage. In this instance, it appears that the West Chester train began to move almost as soon as the Baltimore train stopped. It seems that the conductor of the latter signalled the conductor of the former that he had no passengers for the West Chester train. But the plaintiff, who had a through ticket, was not responsible for this mistake. Reasonable time should be allowed to develop the fact whether there are passengers. A through ticket issued under such an arrangement is binding on both roads. The plaintiff, it seems, hastened across the platform, and attempted to enter, but, being encumbered with a valise, a bundle, and a coil of pipe on his arm, he missed his footing, fell to the track, and his right arm was crushed by the wheels of the car. The

fact appears to be clear, that a reasonable time for the transfer was not given, and that the plaintiff, with all his effort to make haste, was unable to make the connection in consequence of this want of time. Now, though the train was distinctly in motion, so that a bystander, cool and unconcerned, could see it visibly running on the track, are we to say, as a matter of law binding on the jury, that a passenger, having a right to go on the train, and seeing himself about to be left improperly by the wayside, is guilty of culpable legal negligence if he should essay to reach his destination, no matter how slow the motion in running might be, or how little danger was apparent to him? He may be guilty of negligence, but of this the jury should judge under the circumstances. He may not "set his life or limbs on the hazard of a leap at the running train," as the judge emphatically said, and doubtless if such were the character of his attempt it would be negligence. The expression "leap at a running train," denotes a higher effort and less consideration on part of the traveller, than merely attempting to board a car under way. In the former a jury might discover negligence, while in the latter they might not, in view of the circumstances, discover any.

In discussing the conduct of the passenger merely, we are not to lay out of sight the wrong of the company, *in its influence upon his mind and act.* He may have strong motives to reach his destination—indeed, no man but must feel, and feel strongly, at being left by the wayside; he is conscious of his right to go aboard, and naturally becomes excited at the sight of the moving train, perhaps is alarmed, and in some degree confused. If the train be running slowly, and the danger is not apparent to him, what so natural as that he should hurry to reach the train, and to get aboard? But if we lay down the inexorable rule for this and every other case, that whenever the train can be seen to be distinctly running, it is legal negligence to attempt to get on, we set a premium on the wrong of the company, which influenced the very act itself. To say that whenever the motion of the train is so distinct that bystanders can distinctly see it under way, and running along the track, the passenger is to be as cool and unconcerned as they, fold his arms, and say to himself, I'll sue you for this breach of contract in leaving me here, is to him bitterness itself. He may be a stranger, and know not where to find accommodation; the severity of the winter may surround him, or the

heat of summer oppress him; the elements may war against him, and night or approaching darkness may heighten his alarm. Or, if no stranger, his business may be urgent; his family may require his presence; his health may be poor; his means limited; his desire to reach his destination overpowering, and a hundred reasons may influence him to go on. Now, are we to say, that the wrong, which has caused his mind to be excited, and aroused his fears, which confuses him, and has made him less cool and calculating, than those who are standing by, and can look upon the departing train without emotion, is not to be taken into the account in considering his act? What caused his state of mind? Not his own carelessness or breach of duty as a passenger, but the illegal and wrongful act of the carriers. Surely it does not lie in the mouth of the railroad company to say to him, the law will take no account of our breach of duty in its effect upon you. You ought not to have suffered it to move you, but if you saw our train was moving along the track, the slack taken up, the train stretched out, and the cars under way, so that any one else could distinctly see it running, you ought to have looked upon our leaving you on the wayside with perfect coolness; made no effort to go, and sued us for our breach of the contract of carriage. No matter how slow the motion of the train was, nor how little danger in getting on was apparent to you, or what the state of your mind caused by our wrongful act, it is not a question for a jury under the circumstances, but the law holds you guilty of culpable negligence in the attempt to board the train, and we are allowed to go free. This is too stringent a rule for the case. Culpable negligence is the omission to do something which a reasonable, prudent, and honest man would do, or the doing of something which such a man would not do, under all the circumstances surrounding the particular case: Shearman & Redfield on Negligence, § 7; *Kay* v. *Pennsylvania R. R. Co.*, 14 P. F. Smith 273. Instead, therefore, of the rule laid down by the learned judge, he should have left it to the jury to say, under all the circumstances in evidence, whether the danger of boarding the train, when in motion, was so apparent, as to have made it the duty of the plaintiff to desist from the attempt. There is no objection to the court's assisting the jury in the performance of their duty, by reminding them of the danger of boarding a train in motion, and the caution and care that passengers should use, as well as of the duties of the

carriers, and the influence of their wrongful acts in producing the catastrophe. But railroad companies are bound to remember that they owe duties to the public, for whose benefit their charters have been granted, and therefore should not be lightly loosed from the effects of their own wrongful acts. We are of opinion the court should have left the question of negligence on the part of the plaintiff to be determined by the jury upon the circumstances, and under an instruction less stringent and binding as to the duty of the plaintiff. Judgment reversed, and a *venire facias de novo* awarded.

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*Court of Appeals of Kentucky.*

JOSEPH McREYNOLDS ET AL. *v.* CHARLES G. SMALLHOUSE.

The Act of 9th March 1868 incorporating the "Green and Barren River Company," and leasing to the said company the river line of navigation, with all the franchises and appurtenances, together with the right to take tolls, &c., is not in violation of the provision of the National Constitution, forbidding any state without the consent of Congress, to levy any duty of tonnage.

Nor is the act in violation of that clause of the Constitution of the United States, which gives Congress the power "to regulate commerce with foreign nations and among the several states."

The 37th section of article 2d of the state Constitution was adopted to prevent amendments to legislative enactments, by which *distinct* and *unconnected* matters might be introduced in the same law, and is not to be construed as applying to a case, where all the provisions of a statute relate, directly or indirectly, to the same subject, and are not foreign to the subject embraced in the title.

The state legislature having entire control of the funds arising from the collection of tolls on the river line of navigation, could appropriate them to repairing the locks or dams, in preference to placing them to the credit of the sinking fund; and when the cost of repairs greatly exceeded the revenue derived from such navigation, it was authorized to lease the right to take the tolls, without violating the provision of the state Constitution, declaring that the General Assembly should have no power to pass laws to diminish the revenues of the sinking fund."

APPEAL from the Daviess Circuit Court.

*J. W. Bickens* and *Azro Dyer*, for appellant.

*T. H. Hines*, for appellee.

The opinion of the court was delivered by

PRYOR, C. J.—This petition in equity was originally instituted in the McLean Circuit Court, and by change of venue was heard and determined in the Daviess Circuit. Upon the filing of the